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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 GARY J. MASSE,

11 Petitioner,

No. CIV S-03-0517 LKK KJM P

12 vs.

13 MIKE KNOWLES, et al.,

14 Respondents.

ORDER

15 _____/
16 On April 12, 2005, petitioner filed a motion asking that this court reconsider,
17 among other things, the court's March 31, 2005 dismissal of petitioner's application for writ of
18 habeas corpus as time-barred.¹

19 A district court may reconsider a ruling under either Federal Rule of Civil
20 Procedure 59(e) or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5
21 F.3d 1255, 1262 (9th Cir. 1993). "Reconsideration is appropriate if the district court (1) is
22 presented with newly discovered evidence, (2) committed clear error or the initial decision was
23 manifestly unjust, or (3) if there is an intervening change in controlling law." Id. at 1263.

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26 ¹ Petitioner also asks that the court reconsider the denial of petitioner's June 7, 2004
motion for summary judgment and petitioner's June 15, 2004 motion for injunctive relief.

1 Petitioner fails to present anything justifying reconsideration of the dismissal of
2 this matter as time-barred. Accordingly, petitioner's April 12, 2005 motion for reconsideration
3 will be denied in its entirety.

4 Petitioner has filed a notice of appeal of this court's March 31, 2005 dismissal.
5 Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C.
6 § 2253(c); Fed. R. App. P. 22(b).

7 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
8 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
9 § 2253(c)(2). When a district court denies a habeas petition on procedural grounds without
10 reaching the prisoner's underlying constitutional claim, a certificate of appealability should issue
11 when the prisoner shows that jurists of reason would find it debatable whether the petition states
12 a valid claim of the denial of a constitutional right and that jurists of reason would find it
13 debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529
14 U.S. 473, 484-85 (2000). The certificate of appealability must "indicate which specific issue or
15 issues satisfy" the above requirements. 28 U.S.C. § 2253(c)(3).

16 For the reasons set forth in the magistrate judge's February 1, 2005 findings and
17 recommendations, jurists of reason would not find it debatable whether petitioner's application
18 was properly dismissed. Accordingly, a certificate of appealability will not issue in this action.

19 Finally, petitioner seeks leave to proceed in forma pauperis on appeal. Good
20 cause appearing, petitioner's request will be granted.

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Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's April 12, 2005 motion for reconsideration is denied;

2. Petitioner's April 12, 2005 request for a certificate of appealability is denied;

and

3. Petitioner's request for leave to proceed in forma pauperis on appeal is granted.

DATED: May 12, 2005

/s/Lawrence K. Karlton
UNITED STATES DISTRICT JUDGE

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